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Case 8622

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of  
Klofta et al.  
Serial No. 09/898,880  
Filed: July 3, 2001  
Confirmation No. 2203

Group Art Unit: 1616  
Examiner: Konata M. George

Title: FILM-FORMING COMPOSITIONS FOR PROTECTING SKIN FROM BODY FLUIDS  
AND ARTICLES MADE THEREFROM

RESPONSE TO RESTRICTION REQUIREMENT

The Assistant Commissioner for Patents  
Washington, D.C. 20231  
Dear Sir:

This is in response to the Examiner's Restriction Requirement dated February 25, 2002.  
Applicants respectfully request the Examiner to consider the remarks accompanying the election.

REMARKS

Restriction Requirement

The Examiner required election under 35 U.S.C. §121 to one of the following three groups:

- Group I: Claims 1-9, relating to a film-forming composition, class 424;
- Group II: Claims 10-19, relating to an article, class 428; and
- Group III: Claim 20, relating to disposable absorbent article, class 428.

The Examiner stated that Group I and (II and III) are related as product and process of use.  
The Examiner stated that, with respect to MPEP 806.05(h), the claimed process in the instant case can be practiced with another materially different product, such as deodorant, antibacterial wipes, delivery of pharmaceutical agents.

The Examiner also stated that Group II and III are related as combination and subcombination, and are distinct under MPEP §806.05(c) because the claimed combination does not require the particulars of the subcombination because the article can be a stick, stick casing, canister, roller, pump, spray or trigger spray. The subcombination has separate utility such as an absorbent article.

Election with Traverse

Applicants hereby elect to prosecute the subject matter within Group III, relating to an absorbent article having a film forming composition disposed thereon. Group III included Claim 20.

Applicants respectfully traverse the restriction requirement. MPEP §803 sets forth the criteria for restriction, providing that:

There are two criteria for a proper requirement between patentably distinct inventions:

- (1) The invention must be independent or distinct as claimed; and
- (2) There must be a serious burden on the examiner if restriction is not required.

(Citations omitted and Emphasis added)

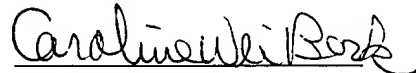
Applicants submit that the claims are related in so far as they all contain a film forming composition comprising skin conditioning agent, viscosity enhancing agent, oleophilic film-forming agent, and optionally other skin care ingredients for skin health benefits.

Additionally, though the Examiner has indicated that different classes will need to be searched, Applicants submit that the scope of searches for all three claim groups is coextensive. That is, a thorough patentability search for all three claim groups will require searching those classes/subclasses relating to film forming compositions. Therefore, Applicants respectfully submit that there is no serious burden on the Examiner if restriction is not required, and that prosecution of claims from all three groups in a single application is permitted and would be efficient in the present case.

CONCLUSION

Based on the above remarks, Applicants respectfully request that the Examiner withdraw the requirement for restriction and allow the claims to be prosecuted in the same application. In the event that the restriction requirement is not withdrawn, Applicants elect to prosecute Group III (i.e., claim 20) of the present application.

Respectfully submitted,  
For: Klofta et al.



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March 6, 2002  
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